

Apar Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-16-1997

Reported in : (1998)(104)ELT698Tri(Mum.)bai

Appellant : Apar Limited

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in the appeal is relating to the demand of duty on the plain glass tube manufactured by the appellants. The department initiated proceedings against the appellants by the show cause notice dated 21-8-1989, alleging that the appellants had wrongly declared plain glass tube as laboratory glassware. The plain glass tubes were correctly classifiable under sub-heading 7001.90, whereas the laboratory glassware is classifiable under sub-heading 7012.10 at Nil rate of duty. The plain glass tubes under the heading referred to above, on other hand, will have to bear at the rate of 40%. The duty was demanded for the period 3-6-1987 to 19-10-1987. The amount of duty involved came to Rs. 10,213.60. The show cause notice has also alleged that the appellants had mis-declared the plain glass tubes deliberately and as such invoked the longer period for demanding duty under Section 11A of the Central Excise Act, 1944. The Addl. Commissioner by the captioned order adjudicated the case holding that plain glass tubes were correctly classifiable under Heading 7001.90 which covers glass in tubes and cullets. He also held that the appellants had suppressed the facts regarding correct description of the plain glass tube with the intention to evade payment of

duty. He demanded duty of Rs. 10,213/- and imposed penalty of Rs. 2,000/-. When the matter was called, none was present for the appellants who have requested for decision on merits.

2. We have heard Shri Gurdeep Singh, the Id. DR for the department who pointed out that the appellants had not correctly described the plain glass tubes under the appropriate heading. On the other hand, they have clubbed the item in their classification list with laboratory glassware which also they manufactured. The Department did not know about it till the date of the visit of the officers following which the show cause notice in this case had been issued for demanding duty. Therefore, there was suppression of facts by mis-declaration of the goods in their classification list. He therefore, pleaded that the duty and penalty levied on the appellants is in order.

3. The appellants in their appeal memorandum have mainly pleaded that their classification lists for the product have been approved and hence the department cannot allege suppression of facts by them for demanding duty in this case and in that context the duty beyond being six months should be struck down.

4. We have carefully considered the submissions. The perusal of the classification list submitted by the appellants shows that they have shown plain glass tubes along with laboratory glassware which they have also declared in the classification list. The records indicate that the department detected the wrong classification of the plain glass tubes only on the visit to the factory of the appellants by the Officers of the Central Excise Range concerned. Thereafter, it was found that the plain glass tubes were not laboratory glasswares and these were simple glass tubes. In such an event, the department, in our view is justified in invoking the longer period for demanding duty under Section 11A of the Central Excise Act, 1944. It is also now well settled that there is no estoppel in these matters that no department finding the new materials they are entitled to adopt the correct classification of the goods. Previous approval of the classification list will not in such circumstances stand in the way. In this view of the matter, we see no reason to interfere with the impugned order. The appeal is rejected.